

# State Government Evaluation Act Report

Maine Labor Relations Board

90 State House Station

Augusta, Maine 04333-0090

Offices Located at 242 State Street

The **mission** of the Maine Labor Relations Board and its affiliated organizations -- the Panel of Mediators and the State Board of Arbitration and Conciliation -- is to foster and improve the relationship between public employees and their employers. The Maine Labor Relations Board ("MLRB") protects the rights and enforces the responsibilities established by the four separate labor relations statutes covering Maine's public sector employees. The Board does this by creating bargaining units, conducting secret ballot elections to certify, change or decertify bargaining agents, and processing prohibited practice complaints. The Panel of Mediators and the State Board of Arbitration and Conciliation provide impasse resolution procedures to assist parties in negotiating initial or successor collective bargaining agreements (through mediation, fact-finding and interest arbitration) and contract grievance arbitration services.

## CONSTITUENCY SERVED

The MLRB serves a client base of over 58,000 employees of municipalities, counties, schools, the University of Maine System, the Maine Technical College System, Maine Maritime Academy, utility and other special purpose districts, local intergovernmental organizations such as Regional Waste System and Mid Maine Waste Action Corp., as well as all three branches of State Government. Approximately 500 public employers throughout the state have at least some of their employees represented for collective bargaining. Of Maine's 491 cities and towns, a little over 100 have one or more bargaining units. Most of the 283 school administrative units have at least one bargaining unit. There are 7 bargaining units in the State's Executive Branch and 3 in the Judicial Branch. The Legislature's non-partisan employees and the employees of certain large agricultural employers are also within the MLRB's jurisdiction; however, those employees are not currently organized and represented for purposes of collective bargaining.

## ORGANIZATIONAL STRUCTURE

The MLRB consists of a small, primarily professional, staff that provides direct services and supports a sizable group of *per diem* appointees. The *per diem* appointees are the members of the Maine Labor Relations Board, the State Board of Arbitration and Conciliation, and the Panel of Mediators. The Maine Labor Relations Board is a tripartite board, consisting of members who are private citizens appointed

by the Governor and confirmed by the Legislature. One member represents the interests of employees, another represents the interests of employers and the Chair represents the interests of the public. Traditionally, the Chair has been an attorney who is not perceived as being aligned with either labor or management. The current members of the Board are the Employee Representative, Carol B. Gilmore of Charleston; the Employer Representative, Karl Dornish, Jr., of Winslow; and the neutral Chair, Peter T. Dawson of Hallowell. There are two alternate members for each of the primary positions on the Board. The Alternate Chairs are Jared S. des Rosiers of Falmouth and Pamela D. Chute of Brewer, the Alternate Employer Representatives are Edwin S. Hamm of Old Orchard Beach and Nelson J. Megna of Oakland, and the Alternate Employee Representatives are Wayne W. Whitney of Brunswick and Robert L. Piccone of Portland.

The three primary Board members determine policy directions for the agency, conduct business on administrative matters, and adjudicate particularly significant prohibited practice complaint cases or representation appeals. Traditionally, the primary Board members share their official duties regarding prohibited practice and representation appeal matters with their alternates so that all of the members gain experience hearing and resolving cases.

The Panel of Mediators consists of 5 to 10 individuals who are knowledgeable and experienced in the field of labor-management dispute resolution. The MLRB nominates candidates to become State mediators and the Governor appoints members of the Panel from the nominees supplied by the Board. Current members of the Panel of Mediators are John Alfano of Biddeford, Osip M. Bukharin of Gorham, David W. Bustin of Hallowell, James Carignan of Lewiston, Jack Hunt of Kennebunk, John J. Mahon of Camden, Sheila Mayberry of Cape Elizabeth, Charles A. Morrison of Auburn, Richard V. Taylor of Scarborough, and Don R. Ziegenbein of Bangor.

Each member of the Panel has unique strengths, abilities and expertise in resolving particular types of disputes. As a group, the Panel is a multi-dimensional resource for assisting in the analysis and resolution of the wide variety of disputes that arise in labor-management relations.

Established in 1909, the State Board of Arbitration and Conciliation ("BAC") is the oldest of the current labor relations dispute resolution bodies in Maine. Like the MLRB, the BAC has a tripartite structure, with a neutral Chair, an Employee Representative, an Employer Representative, and 2 alternates for each primary member. The members are personal appointments by the Governor; however, the candidates for appointment to the "partisan" positions have been persons known and respected by their peers throughout the labor relations community. Due to the highly partisan nature of the business, the candidates for appointment to the Chair positions have not been established practitioners in the field of labor-management relations; however, they have been persons with reputations for fairness and impartiality with experience in alternative dispute resolution or in adjudication as trial attorneys. The current members of the BAC are Chair Shari Broder of Freeport, Employee

Representative Robert F. Bourgault of Biddeford and Employer Representative Virgil Beane of Cumberland Center. The Alternate Chairs are Peter Michaud of Cape Elizabeth and Barbara L. Raimondi of Auburn, the Alternate Employee Representatives are Chuck Hillier of Monmouth and Shawn C. Keenan of Bath, and the Alternate Employer Representative is Kate S. Debevoise of Yarmouth with the other alternate position being vacant at this time.

The chief executive officer of the agency is the Executive Director of the MLRB. The executive director is appointed by the Board and serves “at their will and pleasure.” The executive director is required by statute to be experienced in the field of labor relations. The current executive director has over 20 years of experience in labor relations, having previously served as the Board’s Attorney Examiner and Labor Attorney/Mediator before being appointed as agency head in January, 1991. Due to the severe budget shortfall at that time, the agency’s annual budget was reduced by 30 percent. One strategy adopted by the Board to meet the challenge was to eliminate the senior attorney position of Labor Attorney/Mediator and combine the duties of that position with those of its full-time administrator. In addition to supervising the Board staff, the executive director advises staff attorneys and reviews draft decisions, responds to inquiries from public sector employees and employers regarding the interpretation and application of the labor relations laws, and serves as the agency liaison to the Legislature. The executive director works with the parties in prohibited practice and representation cases, assisting them in resolving their differences as a means of avoiding the formal adjudicatory process. The executive director is designated by statute as the administrator of both the Panel of Mediators and the State Board of Arbitration and Conciliation, and the director serves as legal advisor to both groups.

The Board Counsel is the main legal advisor to the Board on prohibited practice matters and representation appeals. The Counsel’s duties include researching Board decisions, Maine case law, and relevant cases from other jurisdictions, briefing the Board on legal issues, drafting decisions and orders for the Board, and representing the Board when its decisions are appealed to the Superior and Supreme Judicial Courts. The Counsel served as the primary author of the Board’s updated Rules and Procedures that went into effect on January 1, 2001. Prior to her current position, the Counsel was the Board’s Attorney Examiner and, before that, served as an Analyst with the Legislature’s Labor Committee from the Office of Policy and Legal Analysis. In light of the latter experience, the Counsel advises the executive director and helps in the preparation of testimony regarding matters pending before the Legislature. The Counsel also serves as the agency liaison with the Bureau of Information Services and was the lead person in the development of the agency web site. The Counsel continues to serve as the agency webmaster, assisting our client community to effectively access the resources available on our site.

The Attorney Examiner oversees representation and election matters for the Board and administers the processes for creating or changing bargaining units and for selecting, changing or removing bargaining agents for those units. If parties are

unable to agree on the parameters of bargaining units or if issues arise during the election process, the Attorney Examiner convenes an administrative hearing or establishes an alternate process to hear and resolve the dispute. The Attorney Examiner is also responsible for responding to inquiries from the public in labor or employment matters over which the Board does not have jurisdiction by suggesting other agencies or organizations that might be of assistance and making appropriate referrals. Depending on work load in the agency, the Attorney Examiner may also be assigned to work with the Board on prohibited practice matters.

The Board's clerical and administrative support staff consists of a Clerk IV, a Clerk Stenographer III and a Hearings Reporter. The incumbents in these three positions have gained knowledge of the agency's operations through long-term service. They are cross-trained, providing flexibility to effectively respond to fluctuations in agency work load and task coverage when others are away on leave.

The Clerk IV collects user fees from parties as required by statute for the MLRB, the Panel of Mediators and the BAC. She disburses these funds to the *per diem* appointees to compensate them for their services and performs the necessary accounting functions required for the special revenue account. The Clerk IV monitors the Board's accounts, is the purchasing agent, and assists the executive director in the preparation and management of the agency budget.

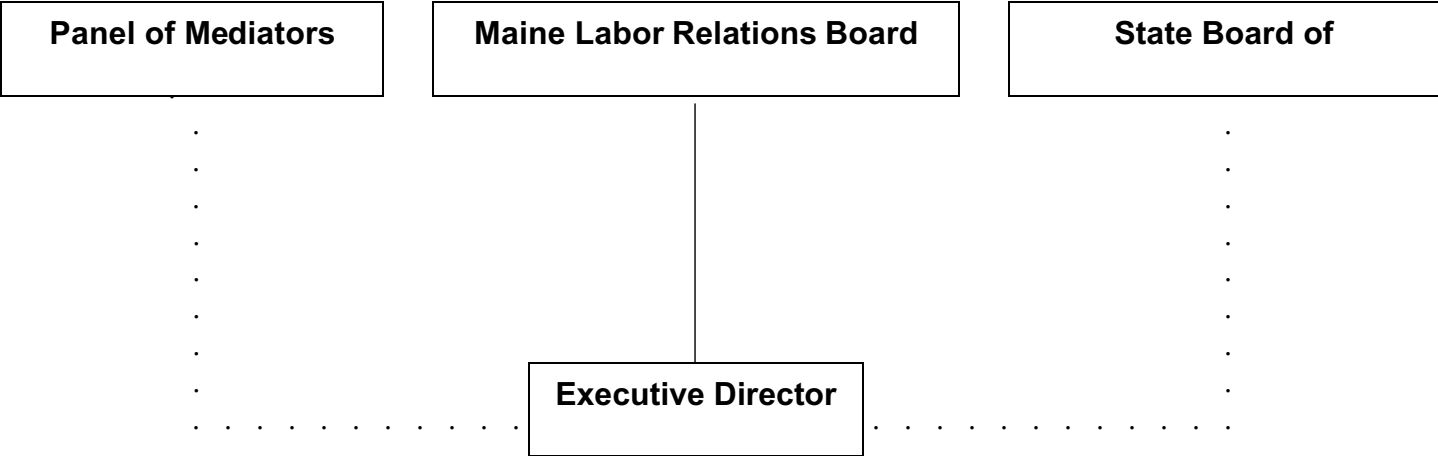
The Hearings Reporter is a professional court reporter who provides verbatim transcripts of the hearings conducted by the Board and the staff attorneys. In addition, the Hearings Reporter schedules all Board hearings and prehearing conferences, serves as the primary administrative person for the BAC, and performs most of the administrative and clerical work involved with the processing of prohibited practice complaint and representation appeal matters.

The Clerk Stenographer III serves as the agency's receptionist and provides administrative and clerical support for the Board's representation program. The Clerk Steno works with the Board Counsel preparing and adding materials to the agency web site. The Clerk Steno also compiles statistics for the agency's annual reports and performs special projects.

The agency's organizational structure is depicted in graphical form on the organizational charts that appear in the following pages. Also included is the list of employee job classifications.



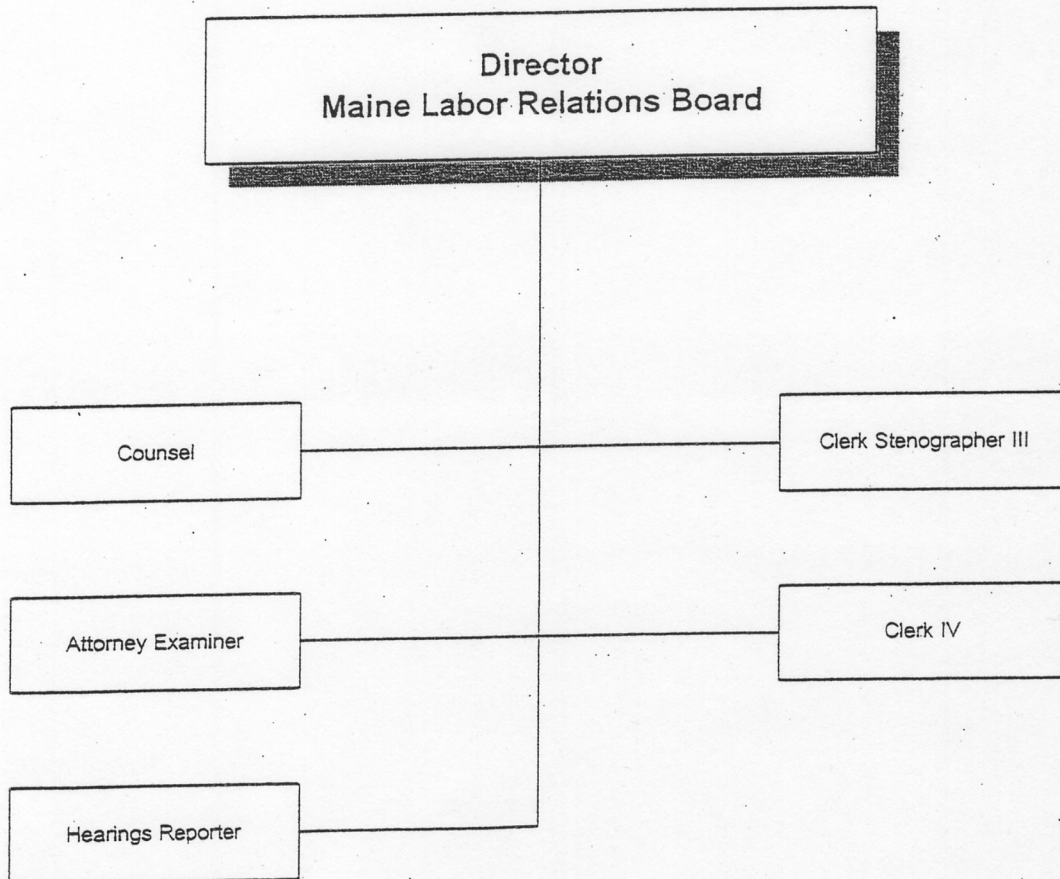
**MAINE LABOR RELATIONS BOARD  
ORGANIZATIONAL CHART**



# POSITION CLASSIFICATION LISTING MAINE LABOR RELATIONS BOARD

Attorney Examiner  
Clerk IV  
Clerk Stenographer III  
Counsel  
Executive Director, Maine Labor Relations Board  
Hearings Reporter

## ORGANIZATIONAL CHART MLRB STAFF



## PROGRAMS

### MAINE LABOR RELATIONS BOARD

#### Enabling legislation

**26 M.R.S.A. §§ 891-893 (1988 & Supp. 2000), Panel of Mediators**

**Statute**, establishes process through which MLRB nominates persons for appointment to the Panel and describes the Panel's relationship with the executive director.

**26 M.R.S.A. §§ 961-974 (1988 & Supp. 2000), Municipal Public**

**Employees Labor Relations Law**, establishes MLRB and provides collective bargaining system for employees of municipalities, schools and utility districts, Maine Turnpike Authority, counties, Maine State Retirement System and other public employees who are not covered by the other public sector labor relations laws.

**26 M.R.S.A. §§ 979-979-Q (1988 & Supp. 2000), State Employees**

**Labor Relations Act**, establishes collective bargaining system for the State's Executive and Legislative Branch employees.

**26 M.R.S.A. §§ 1021-1035 (1988 & Supp. 2000), University of**

**Maine System Labor Relations Act**, establishes collective bargaining system for University of Maine System, Maine Technical College System, and Maine Maritime Academy employees.

**26 M.R.S.A. §§ 1281-1294 (1989 & Supp. 2000), Judicial**

**Employees Labor Relations Act**, together with a companion Administrative Order by the Supreme Judicial Court, establishes collective bargaining system for the State's Judicial Branch employees.

**26 M.R.S.A. §§ 1321-1334 (Supp. 2000), Agricultural Employees**

**Labor Relations Act**, establishes collective bargaining for agricultural employees employed by a person or organization that operates "an egg processing facility that has over 500,000 laying birds and that employs more than 100 agricultural employees."

#### Program Description

The MLRB was first established as the Public Employees Labor Relations Board in 1972. Prior to that time, the Municipal Public Employees Labor Relations Law of 1969 was administered by the Commissioner of Labor and Industry. With an eye toward the extension of collective bargaining rights to State Executive Branch employees, the Board was established as a quasi-independent agency whose policy-making body was not comprised of State employees but, rather, consisted of private citizens appointed by the Governor and confirmed by the Legislature. Through this mechanism, the body charged with defining and enforcing statutory collective

bargaining rights and responsibilities was separated from both the Executive Branch (the employer of State employees) and the employees themselves. It was in 1972 that the Board's tripartite composition was first established.

The MLRB has three main functions: 1) defining and enforcing statutory collective bargaining rights and responsibilities by adjudicating prohibited practice cases; 2) reviewing representation decisions by the executive director or the director's designee through hearing and deciding representation appeals; and 3) overseeing the operations of the agency through the appointment of an executive director, who serves at the Board's will and pleasure, and establishing operating policies for the agency through the formal rule-making process.

The prohibited practice complaint process is a quasi-judicial hearing process through which the 3-member Board: enforces statutory employee rights to engage in collective bargaining activity free from employer interference, restraint, coercion or discrimination; protects the right of employees to choose their own representative for purposes of collective bargaining; enforces the statutory obligation of employers and employees to engage in collective bargaining in good faith; enforces the statutory prohibition against public sector strikes, slowdowns and work stoppages; and protects employee organizations from employer domination. Prohibited practice cases are initiated by the filing of a complaint, which is prosecuted by the complaining party. Once the complaint and a response have been received, the matter is scheduled for prehearing conference with one of the neutral members of the Board, who attempts to clarify the issues, identifies relevant witnesses and documents, and explores the possibility of settling the dispute. Either before the prehearing conference or between the conference and the scheduled Board hearing, the executive director assists the parties to resolve the dispute if at all possible. Matters that remain unsettled are heard by the full Board assisted by a staff attorney. The Board receives evidence and argument in a formal quasi-judicial hearing. The Board deliberates over the merits of the case and a formal, written opinion is prepared by the staff attorney and circulated among the Board members, who either agree or suggest changes. The staff attorney also drafts any dissenting opinions. Staff attorneys represent the Board in the courts in appeals of the Board's decisions.

The Board also may review the decisions of the executive director or the director's designee in representation disputes. Any party aggrieved by a staff decision in a representation matter may appeal the matter to the Board. The Board hears and resolves such appeals through the same process described above; however, sitting in its appellate capacity, the Board usually bases its review on the record of the initial proceeding before the staff attorney and does not conduct a *de novo* hearing.

In addition to being the appointing authority for the executive director, the Board meets periodically with the director to review agency operations and to determine policy for the agency. The Board has met informally with its labor and management constituents to discuss agency operations and to receive advice on improving service. Some suggestions have been implemented immediately. Others requiring formal

rule-making were considered by the Board in the rule-making process that resulted in the rules that went into effect January 1, 2001.

Since the MLRB submits its biennial budget to the Legislature together with the Maine Department of Labor ("MDOL"), the Board participated in the strategic planning process of that department. The Board's goals, objectives and performance measures were incorporated as Objective B.2 of the Strategic Plan for Performance Budgeting submitted by MDOL. The relevant portion of that plan is provided later in this report.

## **Regulatory Agenda/Summary of Rules Adopted**

### Regulatory Agenda

AGENCY UMBRELLA-UNIT NUMBER: 12-180

AGENCY NAME: Maine Labor Relations Board

CONTACT PERSON: Lisa Copenhaver, Counsel, 90 State House Station, Augusta  
ME 04333-0090. Tel: (207) 287-2015

EMERGENCY RULES ADOPTED SINCE THE LAST REGULATORY AGENDA: None

EXPECTED 2001-02 RULE-MAKING ACTIVITY:

The MLRB does not intend to propose any new rules during the coming year as a new set of rules governing the Board's operation became effective on January 1, 2001.

### Summary of Rules Adopted

Chapter 10. General Rules: This chapter defines certain terms used throughout the rules of the Maine Labor Relations Board and contains other rules of general application.

Chapter 11. Bargaining Unit Composition and Representation Matters: This chapter contains rules concerning petitions to create, modify, or merge bargaining units, petitions to hold bargaining agent elections, hearings on unit composition issues, procedures for bargaining agent certification and decertification, and appeals on representation matters.

Chapter 12. Prohibited Practice Complaints; Interpretive Rulings: This chapter contains rules on filing prohibited practice complaints, responding to a complaint, the prehearing conference, the adjudicatory hearing and the issuance of decisions and orders by the Board. This chapter also contains rules on requests for interpretive rulings from the Board.

Chapter 13. Resolution of Contract Negotiation Disputes: This chapter contains rules on requesting mediation, fact-finding, and arbitration and rules governing certain aspects of those proceedings.

A copy of the Board's Rules and Procedures is provided with this report and the Rules are also available on the Board's web site.

### **Coordinated Efforts With Other Agencies**

Due to the mission and statutory structure of the MLRB, the Board does not work collaboratively with other State agencies that come within its subject-matter jurisdiction. Such involvement could interfere with the appearance of impartiality of the Board, if not rise to the level of creating actual conflicts of interest. No Federal agency has jurisdiction over matters in which the Board could be involved.

### **Use of Alternative Delivery Systems**

As noted above, the MLRB is a combination of private citizens, from labor, management or neutral backgrounds, serving as the policy and decision-making body that is supported by a small staff.

The Board's web site contains a search engine and an extensive database of Board prohibited practice and representation appeals decisions, as well as Superior and Supreme Judicial Court opinions reviewing the Board decisions. Access to these decisions helps public employers and bargaining agents to know the parameters of required or permitted conduct and to use such information to avoid violating the law. The web site also includes links to the statutes administered by the Board, the complete text of the Board Rules and Procedures, the Board's forms, the annual reports for the past few years, and a bulletin board of current activities.

### **Emerging Issues**

As part of its response to the budget crisis in the early 1990's, the Board suggested and the Legislature mandated that parties using the various *per diem* services provided by the agency share equally in paying a user fee to fund the Board and Panel members' *per diem* and necessary expenses as well as to cover state cost allocation program charges. Since the MLRB is the exclusive forum to redress violations of the labor relations statutes, the question arises whether parties should be required to pay a fee for the Board's services.

## PANEL OF MEDIATORS

### Enabling legislation

**26 M.R.S.A. §§ 891-893 (1988 & Supp. 2000), Panel of Mediators**

**Statute**, establishes the Panel and provides jurisdiction for its members to assist in “the settlement of disputes between employers and employees or their representatives and other disputes subject to settlement through mediation.”

**26 M.R.S.A. § 965(2) (1988 & Supp. 2000), Municipal Public**

**Employees Labor Relations Law**, establishes the process for mediation of interest and grievance disputes between public employers and the bargaining agents that represent their employees.

**26 M.R.S.A. §§ 979-D(2) (1988), State Employees Labor Relations**

**Act**, incorporates Municipal Act mediation provisions by reference for State employee negotiations and grievance matters.

**26 M.R.S.A. § 1026(2) (1988), University of Maine System Labor**

**Relations Act**, incorporates Municipal Act mediation provisions by reference for higher education employee disputes

**26 M.R.S.A. §§ 1285(2) & (5) (1989), Judicial Employees Labor**

**Relations Act**, incorporates Municipal Act mediation provisions by reference for Judicial Branch employees and provides for mediation-arbitration, a process through which the parties can agree to use a single individual as a mediator, who can decide to convene an interest arbitration proceeding and become the single arbitrator, after a reasonable mediation effort has failed to resolve all outstanding issues.

**26 M.R.S.A. §§ 1325(2) (Supp. 2000), Agricultural Employees**

**Labor Relations Act**, incorporates Municipal Act mediation provisions by reference for covered agricultural employee negotiations.

**13 M.R.S.A. § 1958-B (Supp. 2000), Maine Agricultural Marketing**

**and Bargaining Act**, when the producers and processors of agricultural products are unable to agree on the price paid for commodities or the terms of sale, they may engage in voluntary mediation conducted by a member of the Panel; if any issues remain unresolved 30 days prior to expiration of a contract, the parties must submit to mandatory mediation with a member of the Panel.

### Program Description

Mediation is the cornerstone of the dispute resolution process in Maine. Mediation is available to parties negotiating initial or successor collective bargaining agreements at any time prior to interest arbitration. Occasionally, parties bargaining together for the first time will request mediation very early in the process to get the negotiations on-track; however, in the typical situation, the parties have accomplished

everything they think they can in direct negotiations prior to calling for mediation.

At the outset of the mediation process, the mediator will usually meet with both parties to explain the process, review those issues that have been resolved, and list all of the outstanding issues. The mediator will then separate the parties into caucuses and will meet with them separately to help each party set priorities among the items on its bargaining agenda and begin to learn what it will take for each party to reach an agreement -- their "bottom line." During the ensuing process of "shuttle diplomacy," the mediator is not a mere conduit for the exchange of information between the parties but, rather, manages the flow, determining the best time and sequence in which to transmit information in the circumstances to help the parties achieve final tentative agreement.

In addition to traditional mediation services, State mediators are available for preventive mediation. In this process, the mediator is on the scene before negotiations begin and trains the parties in interest-based bargaining. In place of the demands, positions and counter-proposals that characterize traditional negotiations, the parties in preventive mediation work together to identify their individual and mutual interests and engage in joint problem solving to find ways to best meet their interests. The major benefit of this open bargaining style is to foster a cooperative spirit between the public employer and the bargaining agent, resulting in a marked improvement in their relationship. Preventive mediation has been successful not only in helping parties reach successor collective bargaining agreements but also in addressing issues that are not well suited to resolution within the atmosphere of bargaining the basic agreement. For example, the Executive Branch and the Maine State Employees Association have utilized the process to develop more appropriate work schedules for employees in the Law Enforcement Services bargaining unit that better meet operational needs while addressing the concerns of the unit employees. While affording some advantages over traditional bargaining, preventive mediation is not appropriate in all situations. To be successful, the parties have to participate in preventive mediation with an open mind and a real commitment to identifying and solving problems without a detailed agenda of bargaining outcomes.

The Panel of Mediators also has private sector jurisdiction and is available to assist in the resolution of disputes between corporate employers and the unions that represent their employees. In rare situations involving the potential for major disruption in the state economy, the Governor's Office or the Commissioner of Labor have requested that a State mediator be assigned to monitor the situation. In such instances, the State mediator coordinates with a mediator from the Federal Mediation and Conciliation Service, with the latter always serving as the lead mediator in the case. While preserving the confidentiality of the mediation process, the State mediator keeps the Governor and the Commissioner informed of the general progress of the negotiations and emphasizes the interest of the State of Maine in the resolution of the controversy.

Grievance mediation is a new service offered by the Panel that was authorized



in the First Regular Session of the 120th Legislature. As the name suggests, this process entails both parties agreeing to try to resolve grievance disputes -- disagreements regarding the meaning of the terms of the collective bargaining agreement as applied in given circumstances -- using a State mediator. To date, no request for this service has been received.

The budget for the Panel of Mediators is included with that of the MLRB and is administered by the executive director. Since the MLRB submits its biennial budget to the Legislature together with the MDOL, the Board participated in the strategic planning process of that department. The Board's goals, objectives and performance measures were incorporated as Objective B.2 of the Strategic Plan for Performance Budgeting submitted by MDOL. The relevant portion of that plan is provided later in this report.

### **Regulatory Agenda/Summary of Rules Adopted**

The Panel of Mediators does not have any rules of its own or a rule-making agenda. Chapter 13, §§ 1-6, of the Rules and Procedures of the MLRB that went into effect January 1, 2001, describe who may request mediation services, when and how to do so, the user fee system, preventive mediation, and confidentiality in mediation.

### **Coordinated Efforts With Other Agencies**

The activities of the Panel are coordinated with those of the MLRB and the BAC in assisting parties to negotiate collective bargaining agreements in the public sector. In addition, the members of the Panel work closely with public employers at all levels of government in Maine (as well as with bargaining agents) in performing their official functions. When involved in private sector disputes, the assigned State mediator coordinates with the Federal Mediation and Conciliation Service and keeps the Governor's staff and/or the Commissioner of Labor informed of the general status of negotiations through the executive director.

### **Use of Alternative Delivery Systems**

State mediators are private citizens with a substantial background in labor relations and collective bargaining as representatives of labor, management, or both, who are nominated to their positions by the MLRB and appointed by the Governor. The MLRB staff provide professional and administrative support to the Panel.

### **Emerging Issues**

Members of the Panel have questioned the rate of compensation.

A substantive issue that is emerging with some frequency concerns the scope of the confidentiality provision found in 26 M.R.S.A. § 965 (2)(G) of the Municipal Employees Law and the parallel provisions of the other labor relations statutes.

## **STATE BOARD OF ARBITRATION AND CONCILIATION**

### **Enabling Legislation**

- 26 M.R.S.A. §§ 931-939 (1988 & Supp. 2000), State Board of Arbitration and Conciliation Statute**, establishes BAC, provides for appointment and compensation of members through user fees, describes administrative relationship with executive director of MLRB, and outlines Board's jurisdiction and procedure in both public and private sectors to conciliate and arbitrate disputes. Substantive provisions in the Act include: the right of employees to associate for purposes of collective bargaining or other mutual aid or protection free from employer interference, restraint or coercion; a prohibition on employer retaliation against those who seek assistance from, or provide information to, the BAC; and a requirement that employers seeking to recruit replacement employees during a strike, lockout or other labor dispute must explicitly state that such action is occurring in its advertising.
- 26 M.R.S.A. § 965(3) & (6) (1988 & Supp. 2000), Municipal Public Employees Labor Relations Law**, upon agreement of the parties, the BAC is available for fact-finding and both grievance and interest arbitration services.
- 26 M.R.S.A. §§ 1026(3) (1988), University of Maine System Labor Relations Act**, upon agreement of the parties, the BAC is available for fact-finding and both grievance and interest arbitration services.
- 26 M.R.S.A. §§ 1325(3) (Supp. 2000), Agricultural Employees Labor Relations Act**, parties may agree to use BAC for interest arbitration services.
- 26 M.R.S.A. § 824 (1988), Leave of Absence as Legislator**  
Upon appeal of an employer, BAC Chair or Chair's designee decides whether an employee may take Legislative leave without causing the employer to suffer unreasonable hardship.

### **Program Description**

The State Board of Arbitration and Conciliation is authorized by statute to function in both the private and public sectors; however, much of its private sector jurisdiction has been preempted by the National Labor Relations Act. The BAC functions almost exclusively as a grievance arbitration panel and as fact finders in public sector disputes. Interest arbitration is very rarely requested as the parties

usually have agreed on a contract prior to reaching that stage. Regardless of whether it is doing fact-finding, grievance arbitration or interest arbitration, the parties must agree on using the BAC's services; otherwise, the Board has no authority to proceed.

Grievance arbitration is almost-universally accepted as a means for resolving disputes arising under a bargaining agreement. Despite the best of good faith and honesty of purpose, reasonable people can and often do disagree about the meaning and application of the terms of the collective bargaining agreements they have negotiated. This kind of disagreement typically arises when the employer takes an action that a unit employee or the bargaining agent believes is contrary to the terms of the parties' collective bargaining agreement. A grievance procedure is the usual mechanism for resolving such disputes. Typically, the objecting party lodges its complaint at the lowest level possible in the employer's organizational structure. Many so-called first level grievances can be presented orally and they can be resolved informally. If the grievance is denied or the solution offered is unacceptable, the process becomes more formal and it works its way up the management chain of command to the highest level. If the grievance remains unresolved, the negotiated grievance procedure usually provides that the dispute will be resolved in final and binding arbitration by a neutral selected by the parties, often the BAC.

Fact-finding is the second of the three statutory dispute resolution procedures. If the parties are unable to reach accord on their collective bargaining agreement through direct negotiations and mediation, either of them can request fact-finding. In that process, the parties present evidence and arguments in support of their respective positions on the unresolved issues. The fact-finding panel may consider a variety of factors such as wages, hours and working conditions for comparable positions in the labor market, the financial ability of the employer, changes in the consumer price index since the last round of negotiations, and the labor market conditions in general. After the close of the record, fact-finders issue their recommendations for resolution of the controversy. The report is confidential for 30 days and it remains confidential if the parties are able to resolve the dispute within that time. If not, the report becomes a public document and may be used by either party to attempt to sway public opinion to mount political pressure for resolution.

Interest arbitration is procedurally similar to fact-finding, except that the arbitrators' award is binding on all issues except for those concerning wages, pensions and insurance. There are few interest arbitration proceedings in Maine in any given year and in some years there are none at all.

The tripartite nature of its panels makes conciliation efforts a natural technique in the BAC's dispute resolution tool box. Whether convening to hear a grievance arbitration or a fact-finding matter, the chair of the panel assigned to the case usually inquires whether the parties are willing to attempt to conciliate the dispute and nearly all parties avail themselves of the opportunity. In conciliation, each party meets separately with the panel member representing their perspective and they discuss the relative strengths and weaknesses of their case and explore the possibility of settling

the dispute. At this juncture, the “partisan” Board member may share with “their” respective party their opinion, based on extensive experience in the field, of the likely outcome of the matter, should it go to decision. The two “partisan” Board members then caucus to evaluate whether settlement is possible. If so, the employer and employee representatives work with the parties to narrow their differences and push them toward settlement. The neutral chair does not participate in the conciliation process beyond an occasional need to keep the parties on task. If settlement appears unlikely, the full panel convenes a formal hearing to adjudicate the controversy. Parties that successfully resolve their disputes are invariably more satisfied with the outcome than when the result is imposed by the panel through an arbitration award.

Because of its extensive statutory jurisdiction and its tripartite structure, the BAC has undertaken some significant special assignments in recent years. In 1997, four of the five State employee bargaining units represented by the Maine State Employees Association had settled their successor agreements with the Executive Branch. The Law Enforcement Services bargaining unit had unique problems that eluded resolution through traditional bargaining and mediation. Prior to traditional fact-finding, the executive director suggested to the parties that they might meet with the primary members of the BAC in an attempt to conciliate the dispute. The parties agreed and, through a 41-hour marathon conciliation, final tentative agreement was reached.

The BAC successfully conciliated a prohibited practice case charging violation of the bargaining agent’s statutory duty of fair representation in 1995. These cases are particularly difficult, pitting a bargaining unit employee against her or his collective bargaining representative with the former charging the latter with conduct that is “arbitrary, discriminatory or in bad faith.”

In a separate matter, the BAC conducted an evidentiary hearing and upheld the demotion of a municipal department head. As representatives of management, municipal department heads are not accorded collective bargaining rights under the labor relations law. In this widely-publicized case, the town and the employee were seeking an impartial tribunal to hear and resolve their dispute and they agreed to submit the matter to the BAC and to be bound by the decision of the Board. After five days of hearing, reviewing the testimony of several witnesses and numerous relevant documents, and receiving argument from the parties, the BAC issued a unanimous decision upholding the demotion.

The budget for the State Board of Arbitration and Conciliation is included with that of the MLRB and is administered by the executive director. Since the MLRB submits its biennial budget to the Legislature together with the MDOL, the Board participated in the strategic planning process of that department. The Board’s goals, objectives and performance measures were incorporated as Objective B.2 of the Strategic Plan for Performance Budgeting submitted by MDOL. The relevant portion of that plan is provided later in this report.

## **Regulatory Agenda/Summary of Rules Adopted**

### Regulatory Agenda

AGENCY UMBRELLA-UNIT NUMBER: 12-186

AGENCY NAME: State Board of Arbitration and Conciliation

CONTACT PERSON: Lisa Copenhaver, Counsel, 90 State House Station, Augusta  
ME 04333-0090. Tel: (207) 287-2015

EMERGENCY RULES ADOPTED SINCE THE LAST REGULATORY AGENDA: None

EXPECTED 2001-02 RULE-MAKING ACTIVITY:

Since its inception in 1985 [the BAC was originally established in 1909; however, its governing statute was recodified in 1985], the State Board of Arbitration and Conciliation has relied on the specific provisions of Title 26, Chapter 9, Sub-Chapter II-A for its rules of practice and procedure. During the coming year, the Board of Arbitration and Conciliation will consider whether it is appropriate to have additional rules governing proceedings before the Board and may decide to propose such rules.

### Summary of Rules Adopted

The BAC does not have any rules of its own currently. As noted above, Chapter 13 of the MLRB's Rules and Procedures that went into effect January 1, 2001, contains rules on requesting mediation, fact-finding, and arbitration, and rules governing certain aspects of those proceedings.

## **Coordinated Efforts With Other Agencies**

The activities of the BAC are coordinated with those of the MLRB and the Panel of Mediators in assisting parties to interpret the terms of collective bargaining agreements in the public sector. In addition, the members of the BAC work closely with public employers at all levels of government in Maine (as well as with bargaining agents) in performing their official functions.

## **Use of Alternative Delivery Systems**

The members of the BAC are private citizens who are appointed to office by the Governor and who receive their *per diem* and necessary expenses from a special revenue account generated from fees paid by the users of the Board's services. The neutral members are primarily attorneys or academics with a professional interest in alternative dispute resolution. The partisan members have a substantial background

in labor relations and collective bargaining as representatives of labor or management. The MLRB staff provides professional and administrative support to the BAC.

## **Emerging Issues**

Members of the Panel have questioned the rate of compensation.

Some members of the Board have questioned whether the Board needs additional procedural and evidentiary rules beyond the guidance found in the relevant provisions of the statutes.

## **MLRB STAFF**

### **Enabling legislation**

#### **26 M.R.S.A. §§ 891-893 (1988 & Supp. 2000), Panel of Mediators**

**Statute**, establishes user fees for mediation services collected and disbursed by executive director as well as the latter's administrative authority in connection with the Panel.

#### **26 M.R.S.A. §§ 931-939 (1988 & Supp. 2000), State Board of**

**Arbitration and Conciliation Statute**, establishes user fee system and describes administrative relationship with executive director of MLRB.

#### **26 M.R.S.A. §§ 961-974 (1988 & Supp. 2000), Municipal Public**

**Employees Labor Relations Law**, establishes position of executive director; authorizes the director to review prohibited practice complaints for legal sufficiency as well as to be actively involved in attempting to resolve disagreements between the parties; mandates that the director or the director's designee oversee the representation process, including specifically the unit determination and election processes; describes the director's role in the interest dispute resolution process; and establishes the user fee system administered by the director.

#### **26 M.R.S.A. §§ 979-979-Q (1988 & Supp. 2000), State Employees**

**Labor Relations Act**, substantive delegation of authority to the executive director mirrors the parallel provisions of the Municipal Law.

#### **26 M.R.S.A. §§ 1021-1035 (1988 & Supp. 2000), University of**

**Maine System Labor Relations Act**, the Act specifies several bargaining units and delegates to the executive director or the director's designee the authority to determine which classifications belong to which unit, to modify existing units, and to create additional bargaining units in appropriate circumstances; the balance of the substantive delegation of authority to the executive director mirrors the parallel

provisions of the Municipal Law.

**26 M.R.S.A. §§ 1281-1294 (1989 & Supp. 2000), Judicial**

**Employees Labor Relations Act**, together with a companion Administrative Order by the Supreme Judicial Court, provide substantive delegation of authority to the executive director that mirrors the parallel provisions of the Municipal Law.

**26 M.R.S.A. §§ 1321-1334 (Supp. 2000), Agricultural Employees**

**Labor Relations Act**, substantive delegation of authority to the executive director mirrors the parallel provisions of the Municipal Law.

## **Program Description**

Bargaining units are groups of employee classifications that negotiate as a group for the terms and conditions of their employment. In fashioning an appropriate unit, the goal is to avoid conflicts of interest among the positions that could frustrate the bargaining process. Over the years, the MLRB staff has developed expertise in creating appropriate units and the resulting case law serves as a guide for resolving disputes concerning the composition of proposed bargaining units. In addition, the staff must often resolve questions on whether a particular position is excluded from the coverage of the law, such as a department head or political appointee. All decisions by the executive director or the director's designee regarding representation matters are subject to review by the MLRB.

Bargaining units may be created or changed in two ways -- by agreement of the parties or through an evidentiary hearing and adjudication conducted by the Attorney Examiner. Concurring parties file an agreement on appropriate unit with the agency and, as is the case throughout the representation process, the MLRB requires that notice of the proposed action be given to the employees whose positions are involved as a condition of approving the action.

If the parties are unable to agree on the composition of a bargaining unit, one of them will submit the dispute to the MLRB staff for resolution. Unit matters are initiated by filing a petition with the agency. Upon receipt, petitions are reviewed for sufficiency by the Attorney Examiner. If they are legally insufficient, the petitioner is given an opportunity to amend the petition and, if the problem is not fixed, the petition may be dismissed. The MLRB staff serves legally sufficient petitions on the other party and gives that party a reasonable opportunity to respond with its position regarding the action being sought. If no response is filed, the petition may be granted and the proposed unit is deemed appropriate. Once a response is received, the matter is scheduled for hearing. Meanwhile, the executive director contacts the parties and attempts to assist them to reach a settlement. Most unit disputes are resolved in this way. If the parties are unable to reach agreement, the Attorney Examiner conducts an evidentiary hearing and resolves the matter through adjudication, issuing a formal written unit report, including findings of fact, reasoning and conclusions of law. These decisions may be appealed to the MLRB.

Once an appropriate unit has been created, the employees whose classifications make up the unit have the option of selecting an employee organization to represent them for purposes of collective bargaining. As is the case with unit composition, an employee organization can become exclusive bargaining agent by agreement through voluntary recognition by the employer. Although a large number of voluntary recognitions occurred during the 1970's (particularly for teacher units), in recent years bargaining agent matters are primarily decided through a staff-conducted secret ballot election. Through the election process, unit employees may opt to be represented by a bargaining agent, choose to change bargaining agents, or decide to decertify their bargaining agent. Legally sufficient petitions, supported by a showing of interest signed by at least 30 percent of the employees in a unit, will generate a secret ballot election. Elections are usually conducted by mail and a majority of the valid ballots cast determines the outcome.

The staff's role in the prohibited practice complaint and representation appeal processes was described in the section of this report discussing the program of the MLRB. The administrative/support role of the staff in connection with the BAC was outlined in the section regarding that Board above.

In addition to being involved in attempting to resolve representation and prohibited practice disputes, the executive director manages the interest dispute resolution service, that is, mediation, fact-finding and interest arbitration. Once mediation services have been requested, the director maintains contact with the parties indirectly through the assigned mediator or directly throughout the process to monitor developments and determine which intervention technique might best assist the parties in the circumstances as the bargaining progresses.

The Board staff is a source of public information regarding public sector labor relations in Maine. The staff responds to numerous inquiries from public employers and employees or their representatives, the media, and members of the public. In those instances that involve matters over which the Board has no jurisdiction, the staff will try to provide some orientation to the caller, suggesting other agencies or organizations that might be of help and making appropriate referrals. Information is also disseminated through the Board's web site, which is regularly updated by the staff. The Internet site includes a searchable database of MLRB prohibited practice and representation appeal decisions, a valuable research tool to help parties avoid violations of the law, as well as links to the statutes administered by the Board, the Board's rules, the various forms that facilitate practice before the agency, and an electronic bulletin board.

A new initiative, begun this year at the urging of a member of the Panel, is the convening of a series of seminars to discuss a variety of topics regarding public sector labor-management relations in Maine. The programs provide practitioners an opportunity to meet and discuss practical and legal issues in addition to fostering informal interaction away from the heat of a particular dispute or bargaining situation. To date, three well-attended sessions have been held and an additional program is



scheduled.

The budget for the MLRB staff is included with that of the MLRB and is administered by the executive director. Since the MLRB submits its biennial budget to the Legislature together with the MDOL, the Board participated in the strategic planning process of that department. The Board's goals, objectives and performance measures were incorporated as Objective B.2 of the Strategic Plan for Performance Budgeting submitted by MDOL. The relevant portion of that plan is provided later in this report.

### **Regulatory Agenda/Summary of Rules Adopted**

The staff operates pursuant to the MLRB Rules and Procedures and has no independent rules or separate regulatory agenda.

### **Coordinated Efforts With Other Agencies**

The executive director is the agency liaison with the Legislature and works primarily with the Joint Standing Committee on Labor, assisting the Committee when it considers labor relations matters.

The director coordinates the activities of the MLRB, the Panel of Mediators, and the BAC in assisting parties in resolving their disputes. The director and the staff attorneys work directly with public employers at all levels of government in Maine (as well as with bargaining agents) in performing their official functions. When involved in private sector disputes, the assigned State mediator coordinates with the Federal Mediation and Conciliation Service and keeps the Governor's staff and/or the Commissioner of Labor informed of the general status of negotiations through the executive director.

At the invitation of the Commissioner of Labor and with the concurrence of the MLRB, the executive director attends the regular senior management staff meetings of the Department of Labor to gain information from the Administration concerning matters essential to the operation of the agency within the context of State government; however, the director is careful to avoid being present when collective bargaining or other matters that could be litigated before the Board are discussed. The executive director and the Clerk IV coordinate with the Department of Labor's Office of Administrative Services in preparing the agency budget and supporting documents for submission to the Legislature.

### **Use of Alternative Delivery Systems**

The agency is a partnership between private citizens and State employees.

The MLRB is comprised of private citizens, who are appointees and not State employees, and serves as the policy and decision-making body for the agency. The Panel of Mediators and BAC consist exclusively of appointees. The Board's small staff provides legal expertise and continuity in the public sector labor relations process as well as administrative support to the boards and panel.

## **Emerging Issues**

The staff intends to begin developing a database of bargaining unit and collective bargaining activity information to better assess the state of public sector collective bargaining in Maine.

The staff is acquiring necessary hardware and software to permit our customers to pay user fees with credit cards. Currently the agency provides notices of petition filings by fax and makes extensive use of e-mail to facilitate scheduling.

## **COMPLIANCE WITH FEDERAL AND STATE SAFETY AND HEALTH LAWS**

The Maine Labor Relations Board follows guidelines mandated by the State of Maine. The Board does not have separate guidelines or policies in the areas of workers' compensation or occupational safety and health. The Board staff has discussed health and safety issues at staff meetings. Representatives of the Bureau of Labor Standards have visited the Board office and have assessed each employee's work station and recommended modifications to make them as healthy as possible. Those recommendations, including the purchase of adaptive equipment, have been implemented by the agency.

The Board is well aware of the Americans with Disabilities Act and has owned a telecommunications device for the deaf and listed its number for public access for approximately 9 or 10 years. All letters, scheduling proceedings before the Board or the executive director, include a request that persons with disabilities who require auxiliary aides or services in order to fully participate in the matter notify the Board in advance of the meeting to accord the agency a reasonable opportunity to accommodate such needs. In addition, the Board has in the past consulted with a representative of a state-wide organization that advocates on behalf of people with disabilities to raise awareness of access and other relevant issues.

## **FINANCIAL SUMMARY**

Information on position counts, appropriations, allocations and expenditures for Fiscal Years 1991 through 2001 are included on the following page.

**Maine Labor Relations Board  
Financial Summary**

	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY2001
<b>General Fund</b>										
Appropriation	290,882	277,866	281,383	290,351	317,828	325,603	336,924	348,922	359,395	363,164
Expenditures	274,411	270,957	278,549	284,621	317,442	317,589	336,687	348,535	349,293	360,161
<b>Federal Fund</b>										
Allocation	0	0	0	0	0	0	0	0	0	0
Expenditures	0	0	0	0	0	0	0	0	0	0
<b>Other Special Revenue Fund</b>										
Allocation	33,470	101,754	84,560	67,000	65,555	68,552	83,407	87,371	88,072	88,792
Expenditures	5,201	46,896	63,148	49,015	40,425	62,757	48,218	65,349	63,922	67,086
<b>Total - All Funds</b>										
Approp/Alloc	324,352	379,620	365,943	357,351	383,383	394,155	420,331	436,293	447,467	451,956
Expenditures	279,612	317,853	341,697	333,636	357,867	380,346	384,905	413,884	413,215	427,247

## **STRATEGIC PLAN**

The substantive portion of the Maine Department of Labor's Strategic Plan relating to the MLRB, Objective B.2 of Goal B, is found on the following page. Taken from the latest updated plan issued by the Maine Department of Labor in December, 2000, the page was changed for the purpose of this report by adding the actual performance outcomes for the 2000-01 fiscal year. The projected outcomes for the current fiscal year and the following year will be revised when the strategic plan is updated later this year.



**Goal B:** A culture that fosters employee-management cooperation, protects employee rights, and ensures a safe, healthy workplace.

**Objective B.2:** The public sector composite employee-management cooperation index will increase 5% from the base year of 1999 by the year 2001.

#### **Labor Relations Board – 0160**

*The Maine Labor Relations Board will provide comprehensive representation, prohibited practice, representation appeal, mediation, fact-finding, conciliation and arbitration services. The Board's public information initiative will inform employers and employees of their rights and responsibilities under the law, thereby preventing disputes.*

#### Description of Program Activities

MLRB strives to improve the relationship between public employers and their employees by providing a uniform basis for recognizing the right of public sector employees to join labor organizations of their own choosing and to be represented by them in collective bargaining. Dispute resolution procedures provided include: adjudication, mediation, fact-finding, and both grievance and interest arbitration. The Board is responsible for administration and assignment of members of Panel of Mediators, who are available to private and public sectors.

Performance Measures	Baseline 1998-99	Actual 1999-00	Projected 2000-01	Actual 2000-01	Projected 2001-02	Projected 2002-03
Percent of representation disputes resolved	54.0%	51.0%	52.0%	43.9%	53.0%	54.0%
Percent of prohibited practice complaints & representation appeals resolved	67.0%	49.0%	50.0%	65.2%	51.0%	52.0%
Settlement rate for mediation cases completed this fiscal year	74.0%	81.0%	80.0%	85.9%	80.0%	80.0%
Settlement rate for fact finding cases completed this fiscal year	56.0%	67.0%	68.0%	57.1%	60.0%	70.0%
Percent of arbitration cases resolved	70.0%	66.0%	67.0%	52.6%	68.0%	69.0%
Labor-management cooperation index (weighted composite of above performance measures)	63.7%	63.8%	64.0%	62.8%	64.2%	64.4%

#### Explanatory Notes

The labor-management cooperation index reflects the overall rate at which disputes are resolved by the Maine Labor Relations Board, the Panel of Mediators and the State Board of Arbitration and Conciliation during a particular reporting period. The basic premise underlying the measure is that, as labor-management relations improve, the dispute resolution rate will rise in response to the efforts of the neutral agency.

The index is a weighted measure of the rate of public sector dispute resolution. The resolution rate for each type of dispute the agency resolves is multiplied by the number of cases in that category, each product is then divided by the total number of cases closed during the reporting period, and each resulting quotient becomes the weighted resolution rate for each category. The weighted rates are added together and the sum is the labor-management cooperation index.

The performance measures chosen by the agency measure the critical aspect of its work -- the settlement of disputes. Comparing the actual performance data with the projections for the 2000-01 fiscal year shows that some of the projections were exceeded and some were not achieved.

The MLRB administers a process through which parties are required to negotiate over the terms and conditions of employment for public sector employees. In a variety of ways, the Board provides assistance to the parties in their attempt to reach agreement. The agency has no authority to force either party to make any particular concession or reach any agreement through the collective bargaining process and cannot impose an agreement upon anyone. Inherent in this lack of authority is that the agency has no real control over the success rate of such processes as mediation and fact-finding. Despite the unstinting effort of highly-qualified mediators and fact-finders, parties negotiating in good faith may simply fail to reach agreement. In these cases, the process has not succeeded.

Even in areas such as prohibited practice cases and representation matters where the Board does have authority to resolve all disputes presented, the agency puts a higher priority on amicable settlement of disputes by the parties than on a quick adjudication of the matter. In the prohibited practice complaint area in particular, parties engaged in collective bargaining often file complaints charging the other party with failing to negotiate in good faith. The complaining party then explicitly or implicitly requests that the matter be held in abeyance to allow the parties the opportunity to agree on a collective bargaining agreement, rendering the complaint effectively moot. In other cases, parties are in the process of working through problems; however, a prohibited practice complaint must be filed to keep the adjudication option open, given the relatively short six-month statute of limitations.

While imperfect, these performance measures were the best the agency could devise, especially given the lack of comprehensive information about the collective bargaining process in Maine. Last session, the Board requested and the Legislature appropriated sufficient funds to restore the Clerk Steno III position to 100 percent status -- the Clerk Steno and Counsel positions had been reduced to 80 percent status as a cost-saving measure in the early 1990's. The Board intends to assign the Clerk Steno to support work on developing a database of bargaining unit and negotiations information. Once created, that database may allow development of better performance measures.